

STATE OF MAINE

In the matter of

BANC OF AMERICA SECURITIES LLC
and BANC OF AMERICA INVESTMENT
SERVICES, INC.,

Respondent.

Matter No. 09-064

ADMINISTRATIVE CONSENT ORDER

WHEREAS, Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI" and, together with BAS, "Respondents") are broker-dealers registered in the State of Maine ; and

WHEREAS, coordinated investigations into Respondents' activities in connection with certain of their sales practices regarding the underwriting, marketing, and sale of Auction Rate Securities ("ARS") during the period of approximately August 1, 2007, through February 11, 2008, have been conducted by a multistate task force, including the State of Maine Office of Securities; and

WHEREAS, Respondents have cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

WHEREAS, Respondents have advised regulators of their agreement to resolve the investigations relating to their practices in connection with the underwriting, marketing, and sale of eligible ARS, as further defined herein; and

WHEREAS, Respondents agree to make (or to have made on their behalf) certain payments as part of the resolution of the investigations; and

WHEREAS, Respondents elect to permanently waive any right to a hearing and appeal under 32 M.R.S.A. § 16609 with respect to this Administrative Consent Order (the "Order");

NOW, THEREFORE, the Securities Administrator of the Maine Office of Securities, as administrator of the Maine Uniform Securities Act, 32 M.R.S.A. §§ 16101-16702, hereby enters this Order:

I.

FINDINGS OF FACT

1. Respondents admit the jurisdiction of Maine Office of Securities, neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order, and consent to the entry of this Order by the Securities Administrator.

2. Beginning in March 2008, the task force began its investigation of Respondents' underwriting, marketing, and sale of ARS.

3. In or about August and September 2007, some ARS auctions experienced failures. These failures were primarily based on credit quality concerns related to the ARS at issue, which often involved underlying assets of collateralized debt obligations.

4. During the fall of 2007 and into the beginning months of 2008, as the default rates on subprime mortgages soared and the market in general began experiencing significant credit tightening, monoline insurers that insured many issuances of ARS were also becoming distressed and were at risk of ratings downgrades.

5. The result of the overall market conditions in the fall of 2007 and into the beginning of 2008 resulted in increasing concerns regarding market liquidity, as well as a declining demand for ARS.

6. The task force concluded that Respondents should have had knowledge that, during the fall of 2007 and winter of 2008, the auction markets were not functioning properly and were at increased risk for failure.

7. During that time period, significant numbers of buyers had been exiting the market and the continued success of the auctions was reliant upon the lead broker-dealers, such as BAS, making increased support bids. These support bids had the effect of artificially propping up the market and creating the illusion that the auction rate market was functioning as normal.

8. However, during that time, Respondents continued to market and sell ARS without informing customers of the heightened risks associated with holding these securities.

9. Instead, Respondents engaged in a concerted effort to market ARS underwritten by BAS towards its large retail customer accounts without advising the retail customers of any of the potential risks associated with a failed auction or market illiquidity.

10. On or about February 11, 2008, without notifying any of its customers, BAS stopped broadly supporting the auctions for which BAS was lead broker-dealer.

11. The decision left thousands of Respondents' customers stuck holding illiquid ARS.

12. On or about September 10, 2008, Respondents, Bank of America Corporation (“BAC”), and Blue Ridge Investments, L.L.C. (“Blue Ridge”) agreed, in principle, that BAC would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS for which auctions were in failed mode from “Eligible Investors,” which included all individual investors, all charitable organizations with account values up to \$25 million and small and medium sized businesses with account values up to \$10 million who purchased ARS from Respondents.

II.

CONCLUSIONS OF LAW

1. The Maine Office of Securities has jurisdiction over this matter pursuant to the Maine Uniform Securities Act, 32 M.R.S.A. §§ 16101-16702. The Maine Uniform Securities Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals and entities offering and/or selling securities; and 3) those individuals and entities transacting business as investment advisers within the State of Maine.

A. Respondents Engaged in Dishonest and Unethical Practices.

2. As described in the Findings of Fact section above, Respondents inappropriately marketed and sold ARS without adequately informing their customers of the increased risks of illiquidity associated with the product for the time period August 1, 2007, through February 11, 2008.

3. As a result, Respondents violated 32 M.R.S.A. § 16412 (4) (M).

1 B. Respondents Failed to Supervise Their Agents.

2 4. As described in the Findings of Fact section above, Respondents failed to properly
3 supervise their agents with respect to the marketing and sale of ARS from October 1, 2007, to
4 February 11, 2008.

5 5. As a result, Respondents violated 32 M.R.S.A. § 16412 (4) (I).

6 6. The Securities Administrator finds the following relief appropriate and in the public
7 interest.

8 **III.**

9 **ORDER**

10 On the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the
11 entry of this Order,

12 IT IS HEREBY ORDERED:

13 1. This Order concludes the investigation by the Maine Office of Securities and any
14 other action that the Maine Office of Securities could commence under applicable Maine Uniform
15 Securities Act law on behalf of the State of Maine as it relates to Respondents' underwriting,
16 marketing, and sales of eligible ARS, provided however, that excluded from and not covered by this
17 paragraph 1 are any claims by the Maine Office of Securities arising from or relating to the
18 "Order" provisions contained herein.

19 2. This Order is entered into solely for the purpose of resolving the referenced multistate
20 investigation, and is not intended to be used for any other purpose.

21 3. Respondents will CEASE AND DESIST from violating the Maine Uniform Securities
22 Act and will comply with the Maine Uniform Securities Act.

23 4. Within ten days after the date of this Order, Respondents shall pay to the Treasurer
24 State of Maine the sum of \$ Two Hundred Eighty Two Thousand Sixty Eight and Twenty Four
25 One Hundredth dollars (\$282,068.24), to the State of Maine Office of Securities as a civil monetary
26 penalty pursuant to 32 M.R.S.A. § 16603 (2) (B) (3).

1 5. In the event another state securities regulator determines not to accept Respondents'
2 settlement offer, the total amount of the State of Maine payment shall not be affected, and shall
3 remain at \$ 282,068.24.

4 6. Respondents shall comply with the following requirements:

5 a. Eligible Investors

6 i. No later than October 21, 2008, BAC shall have caused Blue Ridge
7 to offer to buy back, at par plus accrued and unpaid interest or dividends, Eligible
8 ARS (as such term is defined below) for which auctions are in failed mode from
9 Eligible Investors (as such term is defined below) who purchased such Eligible ARS
10 from Respondents prior to February 13, 2008 (the "Offer"). For purposes of the
11 Offer, Eligible ARS means ARS purchased from Respondents on or before February
12 13, 2008, that were subject to an auction failure on or after February 11, 2008. The
13 Offer shall remain open for a period between October 10, 2008, and December 1,
14 2009, unless extended by Blue Ridge.

15 ii. "Eligible Investors" shall mean:

16 (a) Natural persons (including their IRA accounts, testamentary
17 trust and estate accounts, custodian IGMA and UTMA accounts, and
18 guardianship accounts) who purchased Eligible ARS from Respondents;

19 (b) Charities, endowments, or foundations with Internal Revenue
20 Code Section 501(c)(3) status that purchased Eligible ARS from
21 Respondents and that had \$25 million or less in assets in their accounts with
22 Respondents as determined by the customer's aggregate household
23 position(s) at Respondents as of September 9, 2008; or

24 (c) Small Business that purchased Eligible ARS from
25 Respondents. For purposes of this provision, "Small Business" shall mean
26 Respondents' customers not otherwise covered in paragraph III.6.a.ii(a) and
ii(b) above that had \$15 million or less in assets in their accounts with

1 Respondents as of September 9, 2008.

2 iii. Respondents will have provided prompt notice to customers of the
3 settlement terms and Respondents will have established a dedicated telephone
4 assistance line, with appropriate staffing, to respond to questions from customers
5 concerning the terms of the settlement.

6 **b. Relief for Eligible Investors Who Sold Below Par**

7 No later than December 31, 2008, Respondents shall have promptly provided notice
8 to any Eligible Investor that Respondents could reasonably identify who sold Eligible ARS
9 below par between February 11, 2008, and September 22, 2008. Such investors will be
10 paid the difference by Respondents between par and the price at which the Eligible Investor
11 sold the Eligible ARS. Any such Eligible Investors identified after December 31, 2008,
12 shall be promptly paid the difference between par and the price at which the Eligible
13 Investors sold the Eligible ARS.

14 **c. Consequential Damages Claims**

15 No later than October 10, 2008, Respondents shall make reasonable efforts
16 promptly to notify those Eligible Investors who own Eligible ARS that, pursuant to the
17 terms of the settlement, an independent arbitrator, under the auspices of the Financial
18 Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of
19 arbitrating any Eligible Investor's consequential-damages claim.

20 Respondents shall consent to participate in the North American Securities
21 Administrators Association ("NASAA") Special Arbitration Procedure (the "SAP")
22 established specifically for arbitrating claims arising out of an Eligible Investor's inability
23 to sell Eligible ARS. Respondents shall notify Eligible Investors of the terms of the SAP.
24 Nothing in this Order shall serve to limit or expand any party's rights or obligations as
25 provided under the SAP. Arbitration shall be conducted, at the customer's election, by a
26 single non-industry arbitrator and Respondents will pay all forum and filing fees.

1 Arbitrations asserting consequential damages of less than \$1 million will be decided
2 through a single chair-qualified public arbitrator who will be appointed through the FINRA
3 list selection process for single arbitrator cases. In arbitrations where the consequential
4 damages claimed are greater than or equal to \$1 million, the parties can, by mutual
5 agreement, expand the panel to include three public arbitrators who will be appointed
6 through FINRA's list procedure.

7 Any Eligible Investors who choose to pursue such claims through the SAP shall
8 bear the burden of proving that they suffered consequential damages and that such damages
9 were caused by their inability to access funds invested in Eligible ARS. In the SAP,
10 Respondents shall be able to defend themselves against such claims; provided, however,
11 that Respondents shall not contest liability for the illiquidity of the underlying ARS position
12 or use as part of their defense any decision by an Eligible Investor not to borrow money
13 from Respondents.

14 All customers, including but not limited to Eligible Investors who avail themselves
15 of the relief provided pursuant to this Order, may pursue any remedies against Respondents
16 available under the law. However, Eligible Investors that elect to utilize the SAP are
17 limited to the remedies available in that process and may not bring or pursue a claim
18 relating to Eligible ARS in another forum.

19 **d. Institutional Investors**

20 Respondents shall endeavor to work with issuers and other interested parties,
21 including regulatory and governmental entities, to expeditiously and on a best efforts basis
22 provide liquidity solutions for institutional investors that purchased Eligible ARS from
23 Respondents and are not entitled to participate in the buyback under Section III
24 ("Institutional Investors").

25 Beginning on December 31, 2008, and then quarterly thereafter, Respondents shall
26 submit a written report to a representative specified by NASAA outlining the efforts in
which Respondents have engaged and the results of those efforts with respect to

1 Institutional Investors' holdings in Eligible ARS. The written reports will be submitted 20
2 days following the end of the quarter. Respondents shall confer with the representative no
3 less frequently than quarterly to discuss Respondents' progress to date. Such written
4 reports and quarterly meetings shall continue until no later than December 31, 2009.
5 Following every quarterly meeting, the representative shall advise Respondents of any
6 concerns and, in response, Respondents shall detail the steps that Respondents plan to
7 implement to address such concerns.

8 **e. Relief for Municipal Issuers**

9 Respondents shall refund refinancing fees to municipal auction rate issuers that
10 issued such securities through Respondents in the initial primary market between August 1,
11 2007, and February 11, 2008, and refinanced those securities through Respondents after
12 February 11, 2008. Refinancing fees are those fees paid to Respondents in connection with
13 a refinancing and are exclusive of legal fees and any other fees or costs not paid to
14 Respondents in connection with the transaction.

15 **f. Repayment of Interest on Loans Provided To Eligible Investors**

16 To the extent that Respondents loaned money to Eligible Investors secured by
17 Eligible ARS, after February 11, 2008, at an interest rate that was higher than that paid on
18 such Eligible ARS, Respondents shall refund the difference to such Eligible Investors.

19 **g. Penalties**

20 i. Respondents shall pay a total civil penalty of FIFTY MILLION
21 (\$50,000,000) DOLLARS, which shall be allocated among and paid to the
22 Commonwealth of Massachusetts, the State of New York, and such other states and
23 territories that enter administrative or civil consent orders approving the terms of the
24 NASAA settlement (together with the Commonwealth of Massachusetts and the
25 State of New York, the "Approving States"). Any such allocation shall be made at
26 the discretion of the Approving States;

1 ii. The Maine Office of Securities portion of the civil penalty shall be
2 \$282,068.24 and shall be paid to the Maine Office of Securities no later than ten
3 business days after the date of the Consent Order.

4 **h. In Consideration of the Settlement**

5 The Maine Office of Securities will:

6 i. Terminate the investigation of Respondents' underwriting,
7 marketing, and sale of ARS to Eligible Investors as defined herein; and

8 ii. Refrain from taking legal action, if necessary, against Respondents
9 with respect to their institutional investors until December 31, 2008; the Maine
10 Office of Securities shall issue continuances of that period as it deems appropriate;
11 and

12 iii. The Maine Office of Securities will not seek additional monetary
13 penalties from Respondents in connection with all underlying conduct relating to
14 Respondents' underwriting, marketing, and sale of ARS to eligible investors, as
15 defined herein.

16 i. If, after this Order is executed, Respondents fail to comply with any of the
17 terms set forth herein, the Maine Office of Securities may take appropriate remedial action.

18 7. If payment is not made by Respondents, or if Respondents default in any of their
19 obligations set forth in this Order, the Maine Office of Securities may vacate this Order, at its sole
20 discretion, upon 10 days notice to Respondents and without opportunity for administrative hearing.

21 8. This Order as entered into by the Maine Office of Securities waives any
22 disqualification contained in the laws of the Maine, or rules or regulations thereunder, including
23 any disqualifications from relying upon the registration exemptions or safe harbor provisions that
24 BAI, BAS, or any of their affiliates may be subject to as a result of the findings contained in this
25 Order. This Order also is not intended to subject BAI or BAS or any of their affiliates to any
26 disqualifications contained in the federal securities laws, the rules and regulations thereunder, the
 rules and regulations of self regulatory organizations, or various states' or U.S. Territories'

1 securities laws, including, without limitation, any disqualifications from relying upon the
2 registration exemptions or safe harbor provisions. In addition, this Order is not intended to form
3 the basis for any such disqualifications.

4 9. For any person or entity not a party to this Order, this Order does not limit or create
5 any private rights or remedies against Respondents including, without limitation, the use of any e-
6 mails or other documents of Respondents or of others for auction rate securities sales practices, limit
7 or create liability of Respondents, or limit or create defenses of Respondents to any claims.

8 10. Nothing herein shall preclude the State of Maine, its departments, agencies, boards,
9 commissions, authorities, political subdivisions and corporations, other than the Maine Office of
10 Securities and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the
11 officers, agents or employees of State Entities from asserting any claims, causes of action, or
12 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or
13 injunctive relief against Respondents in connection with certain auction rate securities sales practices
14 at Respondents.

15 11. This Order and any dispute related thereto shall be construed and enforced in
16 accordance with, and governed by, the laws of the State of Maine without regard to any choice of
17 law principles.

18 12. Respondents, through their execution of this Order, voluntarily waive their right to a
19 hearing on this matter and to judicial review of this Order under 32 M.R.S.A. § 16609.

20 13. Respondents enter into this Order voluntarily and represent that no threats, offers,
21 promises, or inducements of any kind have been made by the Maine Office of Securities or any
22 member, officer, employee, agent, or representative of the Maine Office of Securities to induce
23 Respondents to enter into this Order.

24 14. This Order shall be binding upon Respondents and each of their successors and
25 assigns with respect to all conduct subject to the provisions above and all future obligations,
26 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

1 Dated this 23rd day of July, 2009.

2 BY ORDER OF:

3 Judith M. Shaw

4 Judith M. Shaw, Securities Administrator

5 State of Maine

6 Office of Securities

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CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY BANC OF AMERICA
SECURITIES LLC AND BANC OF AMERICA INVESTMENT SERVICES, INC.

Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI" and, together with BAS, "Respondents"), hereby acknowledge that they have been served with a copy of this Administrative Order, have read the foregoing Order, are aware of their right to a hearing and appeal in this matter, and have waived the same.

Respondents admit the jurisdiction of the Maine Office of Securities; neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order, and consent to entry of this Order by the Maine Office of Securities as settlement of the issues contained in this Order.

Respondents agree that they shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal, or local tax for any administrative monetary penalty that Respondents shall pay pursuant to this Order.

Respondents state that no promise of any kind or nature whatsoever was made to them to induce them to enter into this Order and that they have entered into this Order voluntarily.

_____ represents that he/she is _____ of BAS, and that, as such, has been authorized by BAS to enter into this Order for and on behalf of BAS.

Ronald J. Newth represents that he/she is COO/SVP of BAI and that, as such, has been authorized by BAI to enter into this Order for and on behalf of BAI.

Dated this _____ day of _____, 2009.

BANC OF AMERICA SECURITIES LLC

By: _____

Title: _____

State of _____)
) ss.
County of _____)

SUBSCRIBED AND SWORN TO before me this _____ day of _____ 2009.

Notary Public

My commission expires:

BANC OF AMERICA INVESTMENT SERVICES, INC.

By:

Title Chief Operating Officer and SVP

State of Massachusetts

County of Suffolk) ss.

SUBSCRIBED AND SWORN TO before me this 17th day of July 2009.

Mary Ann Carroll
Notary Public

My commission expires:

July 4, 2014



MARY ANN CARROLL
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 4, 2014